

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of Qwest Corporation's
Conversion of UNEs to Non-UNEs

FIFTH PREHEARING ORDER

In the Matter of Qwest Corporation's
Arrangements for Commingled
Elements

This matter came on for a prehearing conference on April 20, 2009, before Administrative Law Judge Kathleen D. Sheehy at the Offices of the Minnesota Public Utilities Commission, St. Paul, Minnesota.

Jason D. Topp, Qwest Corporation Law Department, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, appeared for Qwest.

Dan Lipschultz, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4129, appeared for the CLEC Coalition.

Dennis D. Ahlers, Integra Telecom, Inc., 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, appeared for Integra.

Linda S. Jensen, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce (Department). Edward Fagerlund also participated in the conference.

Ganesh Krishnan appeared for the staff of the Minnesota Public Utilities Commission.

Based on the discussions during the prehearing conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

ORDER

Schedule

1. The following schedule is adopted:

- As a starting point, Integra will file the testimony from PUC Docket P-5340, 421/IC-06-768 pertaining to UNE conversions and commingled elements (testimony previously filed by Eschelon, Qwest, and the Department). May 29, 2009
- All Parties will file Direct Testimony. July 24, 2009
- All Parties will file any Rebuttal Testimony. September 18, 2009
- All Parties will file any Surrebuttal Testimony. October 16, 2009
- Hearing, commencing at 9:30 a.m., at the offices of the Minnesota Public Utilities Commission. October 27-29, 2009

2. The deadlines for submission of post-hearing briefs and the recommended decision will be set at the conclusion of the hearing.

Discovery

3. A party may serve requests for information on any other party. All requests for information shall be made in writing or by e-mail. Any request received after 4:30 p.m. on a business day, on a weekend day, or on a state holiday is considered received on the next business day.

4. The party responding to the request shall provide the requested information to the requesting party within ten business days of receipt of the request. A business day does not include weekend days or state holidays.

5. Responses to information requests shall be submitted on or before 4:30 p.m. on the due date.

6. In the event that requested information cannot be supplied within the required response time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by either of the Administrative Law Judges upon motion of a party. Such motion should be made by e-mail notice and a telephone conference among the Administrative Law Judge and affected parties.

7. Parties asked to provide Confidential or Trade Secret Information may require the requesting party to comply with the terms of a protective agreement and order.

Prefiled Testimony

8. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

9. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

10. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practical after the hearing.

11. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any such supplemental record data will be identified by the ALJ as included in the official record.

12. Prefiled testimony that is not offered into the record, or stricken portions of prefiled testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony.

13. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal or surrebuttal testimony and exhibits.

Witnesses

14. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: Qwest, Integra, the CLEC Coalition, and the Department. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge. The parties shall attempt to agree on the order of presentation of issues and witnesses.

15. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. A witness may include new information in his or her summary only for good cause shown and with the prior approval of the Administrative Law Judge.

16. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness' prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than two days prior to the commencement of the hearing. Any prefiled testimony that is not objected to shall be

admitted during the evidentiary hearing without the necessity of laying foundation for the testimony.

Filing of Documents (Excluding Information Requests and Responses)

17. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

18. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

19. With the exception of Trade Secret and other Nonpublic Data, copies of all documents that are filed shall be served by e-mail according to the attached official service list by 4:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

20. Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or delivery to the parties who have signed Exhibit A to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

21. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

22. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available from the Commission website and may be viewed at www.puc.state.mn.us/docs/tradsecret.pdf. Access to nonpublic data shall be governed by the Protective Order to be issued in this proceeding.

Dated: April 22, 2009

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge